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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,019	04/17/2007	Helle Wittorff	05198-P0017A	4929

24126 7590 07/06/2010

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EXAMINER	
GWARTNEY, ELIZABETH A	
ART UNIT	PAPER NUMBER
1781	
MAIL DATE	DELIVERY MODE
07/06/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ATTACHMENT TO ADVISORY ACTION

Claims 1-32 are pending.

Applicants' amendment to the claims filed on June 14, 2010 has been fully considered but is denied entry for the following reasons:

The amendment raises new issues that would require further search given that such limitations were never previously presented in the claims.

Applicant asserts that Examiner actually supports Applicant's argument regarding degradability of granules by stating "[i]f applicant's statement were true, the degradable polymers used in a chewing gum composition would pre-degrade if the chewing gum was kept for a longtime, for example, in a package on the shelf in a store,"

Applicant's assertion is misdirected. First, Examiner has not recognized the pre-degradation issues as applicant asserts, rather, Examiner finds that if applicants statement that it seems likely that degradable polymers may start to pre-degrade if kept as granules with large surface/volume ratio for a long time were true, any chewing gum base made with biodegradable polymer would be expected to degrade over time. Second, in the case Bunczek et al. disclose a chewing gum base comprising biodegradable polymer – clearly, the disclosure of Bunczek et al. demonstrates the successful use of biodegradable polymers in chewing gum. A skilled person would have considered the use of biodegradable polymers in the invention of Gmunder et al. because they are known to be used successfully in chewing gum bases generally.

Applicant explains that the gum bases of Gmunder et al. will have water content above 5% (i.e. 5% to 12%) and some gum bases will have water content below 5% (i.e. 1% to 5%). However, applicant argues that Gmunder et al. teaches nothing which would lead one skilled in the art to believe that levels of water content are more preferred than others - there is no incentive provided to employ moisture content lower than 5% as opposed to moisture content higher than 5%. Applicant explains that they can rebut a *prima facie* case of obviousness based on overlapping ranges by showing the criticality of the claimed range. Applicants submits that through extensive research, they have discovered that degradable polymers can be used in conjunction with granules even with their inherent large surface/volume ratio, if the water content is kept below 5% by weight of the gum base.

While Gmunder et al. does not provide motivation for employing moisture content lower than 5%, the fact remains that Gmunder et al. teach moisture content that overlaps that presently claimed, i.e. 1% to 12%). Because there is substantial evidence to support determination of a *prima facie* case of obviousness over each of the applied prior art references, the burden of proof was properly shifted to the applicants to rebut the prima facie case by presenting persuasive arguments or evidence (e.g. unexpected results). Unexpected results must be established by factual evidence; mere argument or conclusory statements in the specification do not suffice. While applicant state that it is "contrary to the conventional wisdom" to use degradable polymers in conjunction with granules, there is nothing in the record that demonstrates the criticality of the claimed range of water content, i.e. less than 5.0% by weight of the gum base.

Applicants note C7, L59-64 of Bunczek et al. and conclude that the inventors of Bunczek et al. have not found out what it takes to successfully add an edible polyester into chewing gum; only have they had the idea that a polyester could be added. Therefore, applicants argue that a skilled person starting from Gmunder et al. would not feel incentive to use the knowledge of Bunczek et al.

First, in this case, a skilled person is starting with the disclosure of Bunczek et al. and not Gmunder et al.

Second, while Bunczek et al. disclose that polyesters made here were not readily compatible with other base ingredients such as elastomers, elastomer plasticizers, waxes and fats, Bunczek et al. also disclose that a quality chewing gum base and gum product can be made from polyesters from adipic acid and glycerol and/or propylene glycol (C7/L65-67). Also, Bunczek et al. disclose that a quality chewing gum base and gum product can be made from polyesters obtained from longer chain hydrocarbon dicarboxylic acids and glycerol (C10/L10-13). Bunczek et al. goes on to disclose a chewing gum base comprising a food grad polyester, synthetic elastomer, natural elastomer, elastomer plasticizer, filler and softener. Clearly, Bunczek et al. have demonstrated the successful use of edible polyester in chewing gum.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH GWARTNEY whose telephone number is (571)270-3874. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. G./
Examiner, Art Unit 1781

/Keith D. Hendricks/
Supervisory Patent Examiner, Art Unit 1781